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**FILED**

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**Division of Consumer Affairs**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
Docket No.: 05-006

PETER C. HARVEY, Attorney General  
of the State of New Jersey,

Petitioner,

v.

ELIU LOPEZ individually and d/b/a  
L & L BUILDERS a/k/a L.L. BUILDERS,

Respondents.

Administrative Action

**COMPLAINT**

PETER C. HARVEY, Attorney General of the State of New Jersey, with offices located at  
124 Halsey Street, Fifth Floor, Newark, New Jersey, by way of Complaint states:

**PARTIES AND JURISDICTION**

1. Pursuant to N.J.S.A. 52:17A-4, the Attorney General of the State of New Jersey (“Attorney General”) is charged with the responsibility of enforcing the laws of the State of New Jersey (the “State”), including the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (the “CFA”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (the “Regulations”).

2. By this action, the Attorney General (“Petitioner”) seeks injunctive and other relief for violations of the CFA and relevant Regulations. Petitioner brings this action pursuant to the authority under the CFA, specifically N.J.S.A. 56:8-3.1, N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

3. Upon information and belief, Eliu Lopez (“Lopez”) is the owner, member, agent and/or employee of L & L Builders. Upon information and belief, Lopez’s last known and/or current home address is 659 East 29<sup>th</sup> Street, Paterson, New Jersey 07501.

4. Upon information and belief, L & L Builders, also known as L.L. Builders (“L & L Builders”) is not incorporated in the State or elsewhere. Upon information and belief, L & L Builders maintains a principal place of business at 659 East 29<sup>th</sup> Street, Paterson, New Jersey 07501.

5. Lopez and L & L Builders are collectively referred to as “Respondents.”

#### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

6. Upon information and belief, at least since 1999, Respondents have operated a general construction company engaged in the business of performing home improvements in the State.

7. At all relevant times, Lopez was not licensed as an electrician in the State.

8. At all relevant times, Lopez was not licensed as a plumber in the State.

9. On or about December 2, 2000, Ms. Benita Gonzalez (“Consumer Gonzalez”) obtained an estimate (hereinafter “Proposal” or “Contract”) from Respondents for the cost of performing repairs to her three-story home which had been damaged by a fire. Among other things, the Proposal provided that Respondents would demolish and replace all walls and electrical wiring

damaged by the fire, replace all windows and doors damaged by the fire, and install a new roof. The Proposal set the cost of performing these repairs at \$55,000.00.

10. On or about December 7, 2000, Consumer Gonzalez and her son signed the Proposal. The Contract provided that the sum of \$55,000.00 would be paid to Respondents in the following manner: \$20,000.00 to start the work provided for under the contract, \$20,000.00 when construction was halfway completed, and \$15,000.00 upon the completion of the contract.

11. Some time after December 2, 2000, Consumer Gonzalez agreed to allow Respondents to perform plumbing repairs in her home. This agreement was not in writing, but Consumer Gonzalez considered such work as part of the Contract.

12. On or about April 24, 2001, Respondents signed a paper which was provided to Consumer Gonzalez stating that the first floor of her home would be completed on or about May 31, 2001. Respondents failed to complete the agreed upon repairs to the first floor.

13. Upon information and belief, from approximately December 7, 2000 to August 27, 2001, Consumer Gonzalez paid Respondents \$53,000.00 for work performed under the Contract.

14. On or about September 19, 2001, Consumer Gonzalez asked Respondents to leave her home.

15. Upon information and belief, Respondents failed to complete the work to be performed under the Contract. Among other things, Respondents failed to complete the installation of sheet rock on the first floor, failed to complete repairs to the electrical wiring, failed to begin installation of sheet rock on the second and third floors, failed to properly install the plumbing to meet local code, and failed to install a roof.

## COUNT I

### **VIOLATIONS OF CFA BY RESPONDENTS (FALSE PROMISES AND MISREPRESENTATIONS)**

16. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 15 above as if more fully set forth herein.

17. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

18. In the operation of their home improvement business, Respondents have engaged in the use of false promises and misrepresentations.

19. Respondents' conduct in violation of the CFA includes, but is not limited to, the following:

- a. Misrepresenting that Respondents are licensed to perform electrical work in the State;
- b. Misrepresenting that Respondents are licensed to perform plumbing work in the State; and
- c. Misrepresenting that a specific portion of the work required under home improvement contracts would be completed by a date certain.

20. Each false promise and misrepresentation by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## **COUNT II**

### **VIOLATIONS OF CFA BY RESPONDENTS (KNOWING OMISSION OF MATERIAL FACT)**

21. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 20 above as if more fully set forth herein.

22. In the operation of their home improvement business, Respondents have engaged in the knowing omission of material facts including, but not limited to:

- a. Failing to provide Respondents' complete legal name and business address on home improvement contracts;
- b. Failing to inform consumers that Respondents are not licensed electricians in the State;
- c. Failing to inform consumers that Respondents are not licensed plumbers in the State;
- d. Failing to include in home improvement contracts the date or time period within which work is to commence;
- e. Failing to include in home improvement contracts the date or time period within which work will be completed; and
- f. Failing to include in home improvement contracts a description of the products and materials to be used.

23. Each knowing omission of material fact by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## **COUNT III**

### **VIOLATIONS OF THE CFA BY RESPONDENTS (UNCONSCIONABLE COMMERCIAL PRACTICES)**

24. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 23 above as if more fully set forth herein.

25. In the operation of their home improvement business, Respondents have engaged in unconscionable commercial practices including, but not limited to:

- a. Performing plumbing work in the State without being licensed to do so;
- b. Performing electrical work in the State without being licensed to do so;
- c. Failing to complete the work specified in home improvement contracts;
- d. Accepting payment for repairs that Respondents never commenced;
- e. Accepting payment for repairs that Respondents never completed; and
- f. Failing to provide a refund for home improvement work that Respondents never commenced and/or completed.

26. Each unconscionable commercial practice by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2

#### **COUNT IV**

##### **VIOLATIONS OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY RESPONDENTS**

27. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 26 above as if more fully set forth herein.

28. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. (“Home Improvement Regulations”), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

29. Respondents are “seller[s]” within the definition of N.J.A.C. 13:45A-16.1.

30. The Home Improvement Regulations provide, in pertinent part, that certain acts and practices concerning the performance of home improvement contracts shall be unlawful:

7. Performance

....

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or
- iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

....

[N.J.A.C. 13:45A16.2(a)(7)(ii)(iii).]

31. The Home Improvement Regulations also include a writing requirement for contracts priced in excess of \$200.00 and provide, in pertinent part:

- 12. Home improvement contract requirements-writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in under-standable language all terms of the contract, including, but not limited to, the following:
  - i. The legal name and business address of the seller, including the legal name and business address of the of the sales representative or agent who solicited or negotiated the contract for the seller;
  - ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the

type, grade, quality, size or quantity of principal building or construction material to be used.

....

- iv. The dates or time period on or within which the work is to begin and be completed by the seller;

....

[N.J.A.C. 13:45A-16.2(a)(12)(i),(ii),(iv).]

32. Respondents violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

- a. Failing to complete work on the date or time period specified in home improvement contracts
- b. Failing to include in home improvement contracts the legal name and business address of Respondents;
- c. Failing to include in home improvement contracts a clear, accurate and legible statement of all terms and conditions;
- d. Failing to include in home improvement contracts a description of the work to be done and the principal products and materials to be used or installed;
- e. Failing to include in home improvement contracts the dates or time periods on or within which the work is to commence;
- f. Failing to include in home improvement contracts the dates or time period on or within which the work is to be completed; and
- g. Failing to include all changes in the terms and conditions of home improvement contracts in writing.

33. Respondents' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.



### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, Petitioner respectfully requests the entry of an Order, including after a hearing as authorized by the CFA, N.J.S.A. 56:8-3.1:

- (a) Finding that the acts and omissions of Respondents constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Respondents and their owners, agents, employees and representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Respondents, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Respondents, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorney's fees, against Respondents, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and